REMARKS

Entry of this Amendment and reconsideration are respectfully requested in view of the amendments made to the claims and for the remarks made herein.

Claims 1-19 are pending.

Claims 1-19 stand rejected.

Claims 1, 7, 11 and 17 are independent claims.

Claims 1, 2, 7, 8, 9, 11, 12, 15 and 17 have been amended.

Claims 1-4, 7 and 9-10 stand rejected under 35 USC 103(a) as being unpatentable over Heemskerk (USP no. 6,031,815) in view of Guddat (USP no. 6,185,703). Claims 5-6 and 8 stand rejected under 35 USC 103(a) as being unpatentable over Heemskerk and Guddat in view of Nerlikar (USP no. 5,905,798). Claims 11-14, 17 and 19 stand rejected under 35 USC 103(a) as being unpatentable over Heemskerk and Guddat in view of O'Connor (USP no. 5,745,568). Claims 15-16 stand rejected under 35 USC 103(a) as being unpatentable over Heemskerk, Guddat and O'Connor and further in view of Nerlikar (USP no. 5,905,798). Claim 18 stands rejected under 35 USC 103(a) as being unpatentable over Heemskerk, Guddat and O'Connor in view of Tavor (USP no. 6,070,154).

Claims 1-4, 7 and 9-10 stand rejected under 35 USC 103(a) as being unpatentable over Heemskerk (USP no. 6,031,815) in view of Guddat (USP no. 6,185,703).

In rejecting the claims, the Office Action refers to Heemskerk for teaching the elements recited in independent claim 1 except that Heemskerk does not explicitly teach the element of the control logic data comprising executable code, and the control means executing the control logic data and for controlling the processing means in accordance with the control logic data being executed. The Office Action refers to Guddat for teaching the control logic data comprising

executable code and controlling the processing means in accordance with the control logic data being executed. (see previous OA pp; 4-5).

In maintaining the rejection of the claims in reply to applicant's response to the previous Office Action, the current Office Action asserts that col. 2, line 52-col. 3, line 20 of Guddat discloses an instruction cache unite 130 stored in a processor. The cited passage explicitly discloses "associated control logic" that is stored in an instruction cache unit 130 and is executed by the processor. Furthermore one of ordinary skill in the art... would determine control logic data when executed to control a processing means (definition of control data: "data used to synchronize and route other data or to manage the operation of a device."

Applicant respectfully disagrees with and explicitly traverses the rejection of the claims.

With regard to the assertion that Guddat discloses an instruction cache unit 130 and associated control logic, applicant submits that the instruction cache of Guddat represents a memory from which instructions are stored after being read from the storage medium. The instructions may then be provided to a processor to execute the instructions in a particular order. The associated control logic in this case refers to the logic for controlling the reading of the storage medium by the cache memory and providing the instructions read to the processor. The control logic referred to by Guddat is not comparable to the control logic that is read from the storage medium and used by the processor to control reading the medium as is recited in the claims.

In addition, the Office Action refers to Heemskerk as teaching "read means for reading content data and control logic data from the storage medium, the control logic data being uniquely linked to the storage medium. The Office Action refers to col.7, lines 27-41, "the information is the content data and the address information is the control logic data; col. 4, lines 33-43, the auxiliary information being stored in a reference pattern and not being able to be copied results in a unique link to the storage medium." (see OA, page 6).

However, as previously characterized, Heemskerk discloses an optical medium including a plurality of reference marks positioned within a track within the optical medium. The reference marks are offset from the center of the optical medium track such that a reading means may read both content data and reference mark data. Because the reference mark data is offset from the center of the optical medium track, the reading means is able to distinguish content data from the reference mark data. The reference mark data may include auxiliary data that is used to identify and/or authenticate the content data.

Nowhere does Heemskerk provide any teaching that the reference marks are unique to the storage medium. Rather the location of the reference marks must the same for each different storage medium so that the different storage medium may be read by different devices.

Furthermore, Guddat teaches extraction of data from a memory, but the extracted data does not control the operation or mode of the processor extracting the data. Hence, Guddat fails to teach a system that operates in a mode based on the content data stored in the embedded memory.

Hence, even if the reference marks disclosed by Heemskerk were to represent control logic data in the form of executable code or instructions, the system of Guddat fails to provide any teaching or suggestion that the control logic data would be used to control the processing means (i.e., operational mode) in accordance with the execution of the control logic data, as is recited in the claims.

Notwithstanding the arguments presented herein, applicant has elected to amend the claims to present the subject matter claimed in better form. More specifically, the independent claims have been amended to recite a physical variation in the medium unique to the storage medium used to uniquely link the control data to the storage medium. No new matter has been added. Support for the amendment may be found at least on page 4, lines 9-17 ("In an embodiment the read means are arranged for reading out variations in a physical parameter of the storage medium, said variations exhibiting a modulation pattern

representing a necessary parameter for obtaining access to the control logic data. In this embodiment the link between control logic data and storage medium is established by requiring the use of the necessary parameter, which is physically part of the storage medium itself and cannot be copied to another storage medium, in order to access the control logic data. The necessary parameter is encoded on the storage medium by introducing variations in a physical parameter of the storage medium, said variations exhibiting a modulation pattern representing the necessary parameter.").

Neither Heemskerk nor Guddat provide any teaching regarding a unique physical part of the storage medium used to link the control data logic to the storage medium as is recited in the claims.

A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations. However, the Court in *KSR v. Teleflex* (citation omitted) has held that the teaching, suggestion and motivation test (TSM) is merely to be used as a helpful hint in determining obviousness and a bright light application of such a test is adverse to those factors for determining obviousness enumerated in *Graham v. John Deere* (i.e., the scope and content of the prior art, the level of ordinary skill in the art, the differences between the claimed invention and the prior art and objective indicia of non-obviousness) (citation omitted).

In this case, the combination of Heemskerk and Guddat cannot render the subject matter recited in the independent claims 1 and 7 obvious, as the combination of Heemskerk and Guddat fails to disclose a material element recited in the claims.

Accordingly, for the remarks made herein, applicant submits that the reason for the rejection of claims 1 and 7 has been overcome.

With regard to the rejection of the remaining claims, these claims depend from independent claims 1 and 7 and, hence, each of the remaining claims is also allowable by virtue of its dependency upon an allowable base claim.

Claims 11-14, 17 and 19 stand rejected under 35 USC 103(a) as being unpatentable over Heemskerk and Guddat in view of O'Connor (USP no. 5,745,568). In rejecting claims 11 and 17, the Office Action acknowledges that Heemskerk and Guddat fail to teach the claim element "to enable the host apparatus to establish that if installed in a compliant system and, when installed in the compliant system, to enable the processing means to feed the processed content data to an output." The Office Action refers to O'Connor for teaching this claim element.

However, in the interest of advancing the prosecution of this matter independent claims 11 and 17 have been amended in a manner similar to that of claims 1 and 7.

Accordingly, claims 11 and 17 include subject matter not disclosed by the combination of Heemskerk and Guddat for the same arguments made with regard to claim 1.

Hence, even if the teachings of O'Connor were incorporated into the combination of Heemskerk and Guddat, the combination of the teachings of the cited references fails to recite a material element recited in claims 11 and 17.

Accordingly, for the remarks made herein, applicant submits that the reason for the rejection of claims 11 and 17 has been overcome.

With regard to the rejection of the remaining claims, these claims depend from independent claims 11 and 17 and, hence, each of the remaining claims is also allowable by virtue of its dependency upon an allowable base claim.

With regard to the rejection of claims 5-6 and 8 under 35 USC 103(a) as being unpatentable over Heemskerk and Guddat in view of Nerlikar (USP no. 5,905,798), claims 15-16 under 35 USC 103(a) as being unpatentable over Heemskerk, Guddat and O'Connor and further in view of Nerlikar (USP no. 5,905,798) and claim 18 under 35 USC 103(a) as being unpatentable over Heemskerk, Guddat and O'Connor in view of Tavor (USP no. 6,070,154), applicant submits that each of these claims depends from one of the independent claim and none of the additionally cited references provides any teaching to correct the deficiency found to exist in the combination of Heemskerk and Guddat.

Accordingly, the aforementioned dependent claims are also not rendered obvious in view of the cited references as the combination of the references fails to disclose a material element recited in the independent claims, and consequently, the aforementioned dependent claims.

For the amendments made to the claims and for the remarks made, herein, applicant submits that the reason for the rejections of the claims has been overcome and respectfully requests that the rejections be withdrawn and a Notice of Allowance be issued.

Applicant denies any statement, position or averment stated in the Office Action that is not specifically addressed by the foregoing. Any rejection and/or points of argument not addressed are moot in view of the presented arguments and no arguments are waived and none of the statements and/or assertions made in the Office Action is conceded.

Applicant makes no statement regarding the patentability of the subject matter recited in the claims prior to this Amendment and has amended the claims solely to facilitate expeditious prosecution of this patent application. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by the originally filed claims, as presented prior to this

Amendment, and any additional claims in one or more continuing applications during the pendency of the instant application.

Should the Examiner believe that the disposition of any issues arising from this response may be best resolved by a telephone call, the Examiner is invited to contact applicant's representative at the telephone number listed below.

No fees are believed necessary for the timely filing of this paper.

Respectfully submitted,

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